

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Scan-Data Sales Corp.

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation Tax
under Article 9A of the Tax Law for the Year 1974. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of March, 1982, he served the within notice of Decision by certified mail upon Scan-Data Sales Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Scan-Data Sales Corp.
800 E. Main St.
Norristown, PA 19401

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
26th day of March, 1982.

Cornie A. Hagelund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Scan-Data Sales Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation Tax
under Article 9A of the Tax Law for the Year 1974.:

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of March, 1982, he served the within notice of Decision by certified mail upon J. Richard Greenstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

J. Richard Greenstein
Steinberg, Greenstein, Gorelick & Price
818 Widener Bldg., 1139 Chestnut St.
Philadelphia, PA 19107

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
26th day of March, 1982.

Ann R. Hagebent

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

March 26, 1982

Scan-Data Sales Corp.
800 E. Main St.
Norristown, PA 19401

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
J. Richard Greenstein
Steinberg, Greenstein, Gorelick & Price
818 Widener Bldg., 1139 Chestnut St.
Philadelphia, PA 19107
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SCAN-DATA SALES CORP.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Franchise Tax on Business	:	
Corporations under Article 9-A of the Tax	:	
Law for the Year 1974.	:	

Petitioner, Scan-Data Sales Corp., 800 East Main Street, Norristown, Pennsylvania 19401, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the year 1974 (File No. 27912).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 12, 1981 at 1:20 P.M. Petitioner appeared by Steinberg, Greenstein, Gorelick & Price, Esqs. (J. Richard Greenstein, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner is entitled to a 1974 net operating loss deduction, based upon a net operating loss sustained in 1975.

FINDINGS OF FACT

1. Petitioner, Scan-Data Sales Corp., filed a corporation franchise tax report for 1974 and thereafter filed two amended reports for the same year, as follows:

(a) On or about September 17, 1975, petitioner filed its 1974 report, which indicated entire net income of \$281,286.00 after deduction of a net operating loss in the amount of \$22,558.00.

(b) On or about October 15, 1975, petitioner filed a second report for 1974, which was marked "amended" and showed entire net income of \$274,268.00 after deduction of a net operating loss of \$22,558.00. Appended to the amended report was a Claim for Credit or Refund of Corporation Tax Paid, seeking credit in the sum \$8,548.00, based upon recomputation of Schedule G (Business Allocation).

(c) On or about November 4, 1976, petitioner filed a third report for 1974 to which was attached a Claim for Credit or Refund, seeking a credit of \$12,423.00. The claim for credit was founded upon carryback of a 1975 net operating loss in the amount \$288,260.00.

2. On July 14, 1978, the Audit Division issued to petitioner a statement of audit adjustment and a Notice of Deficiency, which disallowed the second claim for refund and asserted additional franchise tax due for 1974 in the amount of \$10,865.00, plus interest thereon. The rationale given was as follows:

"Since none of your 1975 federal loss was carried back to 1974 we cannot apply any state loss to that period. The net operating loss carry forward shown on the amended 1974 return of \$22,558 has also been disallowed as it was a carryover from prior years in which you were not a New York taxpayer."

At the formal hearing, counsel for petitioner conceded the portion of the deficiency concerning carryforward of losses incurred in years prior to 1974.

3. Petitioner is a Pennsylvania corporation which began business in New York on January 1, 1974. During that year petitioner functioned as a conduit for the sale of a bulk inventory. Beginning inventory was \$660,000.00 and ending inventory was zero.

4. For Federal purposes, petitioner's 1974 income was reduced to zero by net operating loss carryforwards from the years 1969 through 1973 which totalled \$285,614.00.

5. For 1975 petitioner reported a loss in the sum \$288,260.00. In that year, petitioner paid the minimum tax of \$250.00, plus a surcharge in the amount of \$50.00.

CONCLUSIONS OF LAW

A. That for purposes of the franchise tax on business corporations, entire net income is defined as "total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department...". Tax Law, Section 208.9.

B. That section 208.9(f) permits a net operating loss deduction from entire net income, as follows:

"A net operating loss deduction shall be allowed which shall be presumably the same as the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code of nineteen hundred fifty-four...except that...(3) such deduction shall not exceed the deduction for the taxable year allowable under section one hundred seventy-two of the internal revenue code..."

C. That allowance by the above-quoted paragraph of net operating loss carryback and carryforward is intended to conform New York practices with Federal practices, and to assist new businesses and those with fluctuating income. See Telmar Communications Corp. v. Procaccino, 48 A.D.2d 189; American Can Co. v. State Tax Commission, 37 A.D.2d 649.

D. That it has consistently been held by the State Tax Commission that a net operating loss is deductible for state purposes in the same manner and amount as is deducted on the taxpayer's Federal return for that year (or, where applicable, in that amount necessary to reduce Federal taxable income to zero).

Section 3.12(d), Ruling of the State Tax Comm., March 14, 1962; 20 NYCRR 3-8.2(d) (eff. January 1, 1976); Matter of Savin Business Machines Corp., State Tax Comm., March 24, 1970; Matter of Hi-Lo Food Centers, Inc., State Tax Comm., March 9, 1970; Matter of Spedcor Electronics, Inc., State Tax Comm., March 9, 1970; Matter of Vision Associates, Inc., State Tax Comm., March 9, 1970. See also Sheils v. State Tax Commission, 52 N.Y.2d 954, revg. 72 A.D.2d 896; Gurney v. Tully, 51 N.Y.2d 818, revg. 67 A.D.2d 303; Matter of The Employers' Fire Insurance Co., State Tax Comm., April 3, 1981.

E. That petitioner's entire Federal taxable income for 1974 did not encompass any deduction for a net operating loss carryback from 1975; petitioner is therefore not entitled to any New York net operating loss carryback to 1974 on account of the loss it sustained in 1975.

F. That the petition of Scan-Data Sales Corp. is hereby denied and the Notice of Deficiency issued July 14, 1978 is sustained in full.

DATED: Albany, New York

MAR 26 1982

STATE TAX COMMISSION

James G. Tully
PRESIDENT

Francis Q. Koenig
COMMISSIONER

Mark J. Smith
COMMISSIONER